



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: KAL Maintenance, Inc.

File: B-225429

Date: February 24, 1987

DIGEST

Federal Acquisition Regulation, 48 C.F.R. § 14.404-1(e)(2) does not prohibit the reinstatement of a solicitation and the award of a contract thereunder where the solicitation was erroneously canceled; an award thereunder would serve the government's needs; and a resolicitation would only prejudice those bidders whose prices have been exposed and afford the protester an opportunity to improve upon its eighth-ranked competitive position.

DECISION

KAL Maintenance, Inc. (KAL) protests the award of a contract to All-Star Maintenance, Inc. (ASMI) under invitation for bids (IFB) No. F22608-86-B-0010. This IFB was issued by the Department of the Air Force to obtain maintenance services for military family housing units at Columbus Air Force Base, Mississippi. KAL contends that the Air Force acted improperly in reinstating the solicitation after cancellation. We deny the protest.

The protested solicitation was issued on June 10, 1986; bids were opened on August 26. After bid opening, ASMI was found to be the low bidder; KAL was the eighth low bidder.^{1/}

^{1/} At the outset, the Air Force argues that KAL is not an interested party due to its comparatively high bid. We do not agree since, if the protest were sustained, KAL would have an opportunity to bid again and thus has a sufficient economic interest in the outcome. See 3M Deutschland GmbH, B-221841, May 20, 1986, 86-1 C.P.D. ¶ 473.

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Subsequent to bid opening, but prior to award, the Air Force's Contract Review Committee alerted the contracting officer to the fact that the IFB did not incorporate the provisions of the Davis-Bacon Act. The Committee stated that, without incorporating that Act's provisions, the IFB was defective and would result in a flawed contract, and advised the contracting officer to cancel the solicitation. Based on this advice, and under the authority of the Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-1(c)(9) (1986),^{2/} the contracting officer canceled the solicitation on September 25, 1986.

On October 2, the Air Force obtained additional information which indicated that the Davis-Bacon Act did not, in fact, apply to this procurement; therefore, it concluded that the cancellation had been improper. Accordingly, the solicitation was reinstated and the contract was awarded to ASMI on October 21.

The protester does not dispute that the IFB was canceled in error. It simply argues that once an IFB has been canceled "in the public's interest" there is no alternative but to conduct a new competition because the FAR, 48 C.F.R. § 14.404-1(e)(2), provides: "If the [IFB] has been cancelled for the reasons specified in paragraphs (c) . . . (9) . . . the contracting officer shall proceed with a new acquisition."

Counsel for the protester made the identical argument before us in ADAK Communications Systems, Inc., B-222546, July 24, 1986, 86-2 C.P.D. ¶ 103, and for the same reasons we rejected that contention in ADAK, we reject it here.


^{2/} This section states:

"(c) Invitations may be cancelled and all bids rejected before award but after opening when, consistent with paragraph (a)(1) above, the agency head determines in writing that--

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"(9) For [reasons other than those listed in subsections 1-8], cancellation is clearly in the public's interest."

Although, as the protester points out, the FAR, 48 C.F.R. § 14.404-1(e)(2), does not expressly state that it applies only to IFB's which have been canceled properly, we think it logical to apply it only in that context, because the provision's purpose is to prescribe a second competition where the results of the first have been invalidated by some defect. It permits the government to set things aright--through revising the specifications, for example--and obtain competition based upon an accurate statement of the government's needs. Here, the original IFB in fact was not defective (although for some time after bid opening the Air Force erroneously thought that it was) and it did result in competition from 17 bidders, including the protester. Since an award under the original IFB would serve the government's needs, a second competition would only prejudice those bidders whose prices have been exposed and afford the protester, the eighth low bidder, an opportunity to improve its competitive position. See ADAK, supra; Woodson Construction Co., Inc.--Reconsideration, B-221530.2, May 23, 1986, 86-1 C.P.D. ¶ 483; Suburban Industrial Maintenance Co., B-188179, June 28, 1977, 77-1 C.P.D. ¶ 459. Reinstatement therefore is necessary to protect the integrity of the competitive procurement system by avoiding an unfair bidding situation after the bids were made public. See ADAK, supra; Lanier Business Products, Inc., B-203977, Feb. 23, 1982, 82-1 C.P.D. ¶ 159. The Air Force's reinstatement of the solicitation and award to ASMI thereunder was proper and the protest is denied.


Harry R. Van Cleve
General Counsel